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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LORENZO ROBERTSON,
Plaintiff,

vs.

EXPERIAIN INFORMATION SOLUTIONS,
INC.,

TRANS UNION, LLC.,

CHEXSYSTEMS, INC.,

FIRST ADVANTAGE SAFERENT, INC.,

Defendants.

Case No.: 5:11-CV-03896 HRL
Hon. Howard R. Lloyd
Dept. 2

**MEMORANDUM OF POINTS AND
AUTHORITIES SUPPORTING
MOTION TO DISMISS FOR FAILURE
TO STATE A CLAIM**

FED R. CIV. P. 12(B)(6)

Date: October 25, 2011
Time: 10:00 a.m.
Dept.: 2

Complaint Filed: June 29, 2011

I. INTRODUCTION

Plaintiff's Complaint fails to state facts supporting any claim. Indeed the Complaint lacks any factual narrative whatsoever. Accordingly, the Complaint does not comply with the basic requirements of Rule 8. Fed R. Civ. P. 8. Nonetheless, it appears that Plaintiff contends that each of the Defendants inaccurately reported information on his credit report and/or failed to reinvestigate a dispute. (Compl., ¶¶ 21-23.) He recites the exact same allegations against each Defendant.

Plaintiff's Complaint is a classic example of "element pleading." Plaintiff alleges only that (some of) the elements of a FCRA claim can be established, without providing any factual allegations supporting those conclusions. This practice is forbidden under federal procedural law and the Complaint must be amended.

It is also important that Plaintiff has not pleaded even the bare elements of a FCRA claim correctly. For instance, to state a claim for failure to maintain procedures to assure maximum possible accuracy under 15 U.S.C. Section 1681e, Plaintiff must allege that a falsity on his report *resulted* from a failure to maintain adequate procedures to assure accuracy. He does not do so. Further, to state a claim regarding Chex' failure to investigate his dispute under 15 U.S.C. Section 1681i(a), Plaintiff must allege that he requested reinvestigation, and that Chex refused to reinvestigate his dispute. He does not do so. Moreover he has failed to allege that Chex would have discovered the inaccuracy had it reinvestigated; a further necessary element of his claim.

Accordingly, Plaintiff must flush out his allegations and add factual context if he is to survive the pleading stage. The motion to dismiss should be granted with leave to amend.

II. LAW GOVERNING MOTION

A motion to dismiss brought under Federal Rule of Civil Procedure 12(b)(6) "tests the legal sufficiency of a claim." *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). In deciding whether to grant a motion to dismiss, the court "accept [s] all factual allegations of the complaint as true and draw[s] all reasonable inferences" in the light most favorable to the nonmoving party. *Rodriguez v. Panayiotou*, 314 F.3d 979, 983 (9th Cir. 2002). Nonetheless, the court "need not

1 assume the truth of legal conclusions cast in the form of factual allegations." *United States ex rel.*
 2 *Chunie v. Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir. 1986).

3 To survive a motion to dismiss, a complaint must "contain sufficient factual matter,
 4 accepted as true, to `state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S.
 5 Ct. 1937, 1949 (May 18, 2009) (quoting *Bell Atl. Corp v. Twombly*, 550 U.S. 544, 570 (2007)).

6 A claim has facial plausibility when the plaintiff pleads factual content that allows the
 7 court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The
 8 plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer
 9 possibility that defendant has acted unlawfully. Where a complaint pleads facts that are "merely
 10 consistent with" a defendant's liability, it "stops short of the line between possibility and
 11 plausibility of `entitlement to relief.'" *Id.* (citing *Twombly*, 550 U.S. 556-57). Moreover, it is
 12 inappropriate to assume that the plaintiff "can prove facts which it has not alleged or that the
 13 defendants have violated the . . . laws in ways that have not been alleged." *Associated Gen.*
 14 *Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983).

15 **III. PLAINTIFF'S CAUSE OF ACTION FOR VIOLATION OF FCRA FAILS** 16 **TO STATE FACTS SUFFICIENT TO STATE A CLAIM**

17 A complaint must state a short and plain statement of the claim. Fed. R. Civ. P. 8(a)(2).
 18 While Rule 8(a) does not require detailed factual allegations, "it demands more than an
 19 unadorned, the defendant-unlawfully-harmed-me accusation." *Iqbal*, 129 S. Ct. at 1949. A
 20 pleading is insufficient if it offers mere "labels and conclusions" or "a formulaic recitation of the
 21 elements of a cause of action." *Twombly*, 550 U.S. at 555; *Iqbal*, 129 S. Ct. at 1950 ("Threadbare
 22 recitals of the elements of a cause of action, supported by mere conclusory statements, do not
 23 suffice.").

24 Plaintiff's Complaint fails to meet this, most basic, requirement as it does nothing more
 25 than allege some elements of a FCRA claim supported by mere conclusions. For instance,
 26 Plaintiff alleges that Chex—like the rest of the Co-Defendants—"failed to conduct a reasonable
 27 investigation of Plaintiff's disputes..." (Compl., ¶ 21.) Yet Plaintiff does not allege that he made
 28 any such disputes in the first place, or what the content of the dispute was that would have

1 enabled Chex to undertake a reasonable investigation. Plaintiff also alleges that Chex fails to
 2 maintain adequate procedures. (Compl., ¶ 22.) Here again, however, Plaintiff's allegations are
 3 merely legal conclusions. He alleges no facts to support his claims. He does not state, for
 4 instance, what the flawed procedure consists of, and how it resulted in inaccurate information
 5 winding up on his report. Indeed, he does not even describe the nature of the "inaccuracy" he
 6 complains of.

7 These sorts of unsupported conclusions are properly disregarded by the Court as they do
 8 not amount to a plausible claim. These are mere elements of a claim, unadorned and
 9 unsupported. Such conclusions need not be accepted by the Court (*United States ex rel. Chunie*,
 10 788 F.2d at 643 n.2) and cannot form the basis of a valid claim. *Twombly*, 550 U.S. at 555; *Iqbal*,
 11 129 S. Ct. at 1950

12 Even were Plaintiff's conclusions sufficient—they are not—he has still failed to state a
 13 claim. First, Plaintiff claims that Chex failed to conduct a reinvestigation of disputes with the
 14 original creditors in violation of 15 U.S.C. Section 1681i(a). However, a prima facie showing
 15 under § 1681i consists of a showing that: (1) plaintiff's credit file contains inaccurate or
 16 incomplete information; (2) plaintiff notified the credit reporting agency directly of the inaccurate
 17 or incomplete information; (3) plaintiff's dispute is not frivolous or irrelevant; (4) the credit
 18 reporting agency failed to respond to plaintiff's dispute; (5) the failure to reinvestigate caused
 19 plaintiff to suffer damages; (6) actual damages, such as damages caused by humiliation, mental
 20 distress, or injury to reputation or creditworthiness, resulted to plaintiff. *Thomas v. Trans Union*
 21 *LLC*, 197 F.Supp.2d 1233, 1236. (D.Or. 2002).

22 Plaintiff's claim is insufficiently plead because he does not assert i) that he directly
 23 requested reinvestigation from Chex; ii) that his dispute was not frivolous; iii) that Chex failed to
 24 respond to his dispute; or iv) that the failure to reinvestigate was the cause of Plaintiff's damage.
 25 *Id.* Accordingly his claim fails. Moreover, the last element is a particularly important one. To
 26 state a claim Plaintiff must allege, and has not, that Chex would have discovered the inaccuracy
 27 had it conducted a reasonably diligent investigation. *Cushman v. Trans Union Corp.*, 115 F.3d
 28 220, 226 (3d Cir.1997) ("The decisive inquiry is whether the defendant credit bureau could have

1 uncovered the inaccuracy if it had reasonably investigated the matter").

2 As to Plaintiff's claim that Chex does not maintain reasonable procedures, to state such a
 3 claim, the plaintiff must allege four elements: (1) that "inaccurate information was included in a
 4 consumer's credit report," (2) that "the inaccuracy was due to defendant's failure to follow
 5 reasonable procedures to assure maximum possible accuracy," (3) that "the consumer suffered
 6 injury," and (4) that "the consumer's injury was caused by the inclusion of the inaccurate entry."
 7 *Philbin v. Trans. Union Corp.*, 101 F.3d 957, 963 (3d Cir.1996). Here again, Plaintiff's claim
 8 fails because he does not allege that the particular inaccuracy he complains of in this case arose as
 9 a result of an errant or flawed policy. There is no attempt to draw a causal connection between
 10 Chex's flawed procedure (whatever it may be) and the inaccuracy in his report (whatever it may
 11 be).

12 Accordingly, Plaintiff's allegations against Chex are incomplete and inadequate. Plaintiff
 13 must state the facts underlying his legal conclusions, and touch upon each element of his claim, if
 14 he is to survive the pleading stage.

15 IV. CONCLUSION

16 For the forgoing reasons the motion to dismiss Plaintiff's Complaint should be sustained
 17 as to Chex, with leave to amend.

18
 19 DATED: September 1, 2011

SEVERSON & WERSON
 A Professional Corporation

21 By: /s/ Eric J. Troutman
 22 ERIC J. TROUTMAN

23 Attorneys for Defendant
 24 CHEX SYSTEMS, INC.

CERTIFICATE OF SERVICE

I, the undersigned, declare that I am over the age of 18 and am not a party to this action. I am employed in the City of Irvine, California; my business address is Severson & Werson, The Atrium, 19100 Von Karman Ave., Suite 700, Irvine, CA 92612.

On the date below I served a copy, with all exhibits, of the following document(s):
MEMORANDUM OF POINTS AND AUTHORITIES SUPPORTING MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM on all interested parties in said case addressed as follows:

LORENZO ROBERTSON
 715 Lexington Place
 Gilroy, CA 95020

Plaintiff, In Pro Per

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☒ **(BY MAIL)** By placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in Irvine, California in sealed envelopes with postage fully prepaid.

☐ **(BY HAND)** By placing the documents in an envelope or package addressed to the persons listed above and providing them to a professional messenger service for delivery.

☐ **(BY FEDERAL EXPRESS)** By depositing copies of the above documents in a box or other facility regularly maintained by Federal Express with delivery fees paid or provided for.

☐ **(BY EXPRESS MAIL)** By placing the above documents in the United States mail for Express Mail delivery at The Atrium, 19100 Von Karman Ave., Suite 700, Irvine, CA 92612, in a sealed envelope addressed as above, with Express Mail postage thereon fully prepaid.

☐ **(BY FAX)** By use of facsimile machine telephone number (949) 442-7118, I faxed a true copy to the addressee(s) listed above at the facsimile number(s) noted after the party's address. The transmission was reported as complete and without error.

☒ **(BY ELECTRONIC SERVICE)** Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF system sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's EC/ECF system.

☐ **(BY ELECTRONIC TRANSMISSION)** By sending a file of the above documents(s) via electronic transmission (e-mail) at _____ am./pm. using e-mail address ([@severson.com](mailto:severson.com)) to the e-mail address designed for each party identified above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. This declaration is executed in Irvine, California, on September 1, 2011.

/s/ Victoria A. McCay
 Victoria A. McCay